



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------|------------------|
| 09/882,091 | 06/15/2001 | Jay H. Connelly | ITL1965US (P11863) | 8788 |
| 47795 | 7590 | 08/06/2008 | | |
| TROP, PRUNER & HU, P.C. 1616 S. VOSS RD., SITE 750 HOUSTON, TX 77057-2631 | | | EXAMINER SHELEHEDA, JAMES R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2623 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 08/06/2008 PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/882,091

Applicant(s)

CONNELLY, JAY H.

Examiner

JAMES SHELEHEDA

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 61-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 61-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 06/23/08 have been fully considered but they are not persuasive.

On page 10, applicant argues that cited PCT application (Hackson WO 00/27124) does not control the broadcast.

In response, it is noted that Hackson explicitly discloses wherein the rating information will be transmitted upstream to a content broadcaster (page 6, lines 10-12 and page 10) to tailor future broadcast content (page 6 and page 10, lines 9-20). This clearly meets the claim limitation of "receiving broadcast content selected based on said ratings". Therefore, applicant's arguments are not persuasive.

In response to applicant's argument that the PCT application does not analyze content descriptions, it analyzes content itself, it is noted that Hackson was not specifically relied upon to disclose this limitation. As indicated in the rejections, Dudkiewicz discloses rating content based upon content descriptions (paragraph 79).

Hackson was then relied upon for disclosing transmitting rating information to a content broadcaster and receiving content selected based on said ratings (page 10). Therefore, applicant's arguments are not convincing.

Claim Rejections - 35 USC § 103

Art Unit: 2623

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-35 and 61-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dudkiewicz (US 2002/0152474 A1) (of record) in view of Hackson et al. (Hackson) (WO 00/27124 A1) (of record).

As to claim 1, while Dudkiewicz discloses a method, comprising:

receiving broadcast communications including descriptions of available broadcast content (paragraphs 53, 64 and 75) independent of the content (in regards to upcoming content; paragraph 53);

performing an automated rating algorithm to rate the content based on said descriptions to develop ratings of said content based on descriptions (paragraph 79), he fails to specifically disclose transmitting the rating information for use by a content broadcaster and receiving broadcast content selected based on said ratings.

In an analogous art, Hackson discloses a broadcast system (Fig. 1) wherein ratings information related to content items (page 4-5) are generated based upon received content descriptors (Fig. 4; pages 9-10) and transmitted for use by a content broadcaster and receiving broadcast content selected based on said ratings (page 6 and page 10) for the typical benefit of allowing providers to better tailor programming services based upon viewer ratings and preferences (pages 9-10).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating information for use by a content broadcaster and receiving broadcast content selected based on said ratings, as taught by Hackson, for the typical benefit of allowing providers to better tailor programming services based upon viewer ratings and preferences.

As to claim 61, while Dudkiewicz an article of manufacture (client device, 26), comprising:

a machine readable medium (Fig. 10; paragraph 74) that provides instructions which, when executed by a machine (paragraph 74), cause the machine to:

receive broadcast communications including descriptions of available broadcast content (paragraphs 53, 64 and 75) independent of the content itself (in regards to upcoming content; paragraph 53); and

perform an automated rating algorithm to rate at least the content based on said description to develop rating of the content based on the descriptions (paragraph 79), he fails to specifically disclose transmitting the rating feedback via a second communications link to a remote location.

In an analogous art, Hackson discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (pages 3-4 and pages 8-10) are generated based upon received content descriptors (pages 8-10) and transmitted to a remote location (pages 3-4) for the typical benefit of allowing providers to customize

programming and program guide services based upon viewer ratings and preferences (pages 5-7 and pages 8-11).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback via a second communications link to a remote location, as taught by Hackson, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 83, while Dudkiewicz discloses a broadcast system (Fig. 1), comprising:

broadcasting broadcast communications including content descriptors via a first communications link from a broadcast source (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are broadcast from the broadcast source to the client systems (in regards to upcoming content; paragraph 53); and

a rating feedback comprising a rating generated by the client system of at least a portion of the plurality of content pieces (paragraph 79), he fails to specifically disclose transmitting the rating information for use by a content broadcaster and receiving broadcast content selected based on said ratings.

In an analogous art, Hackson discloses a broadcast system (Fig. 1) wherein ratings information related to content items (page 4-5) are generated based upon

received content descriptors (Fig. 4; pages 9-10) and transmitted for use by a content broadcaster and receiving broadcast content selected based on said ratings (page 6 and page 10) for the typical benefit of allowing providers to better tailor programming services based upon viewer ratings and preferences (pages 9-10).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating information for use by a content broadcaster and receiving broadcast content selected based on said ratings, as taught by Hackson, for the typical benefit of allowing providers to better tailor programming services based upon viewer ratings and preferences.

As to claims 2 and 62, Dudkiewicz and Hackson disclose wherein the first communications link and the second communications link comprise a common transmission platform (see Dudkiewicz at paragraph 53 and Hackson at pages 5-7).

As to claims 3 and 63, Dudkiewicz and Hackson disclose wherein the first communications link and the second communications link comprise separate transmission platforms (see Dudkiewicz at paragraph 53).

As to claims 4 and 64, Dudkiewicz and Hackson disclose wherein the rating feedback comprises a list of a plurality of content pieces (see Dudkiewicz at paragraph 79 and Hackson at pages 8-10), and wherein transmitting the rating feedback comprises periodically transmitting a batch of the rating feedback to the remote location

(storing and transmitting several responses; see Hackson at pages 8-10), the remote location being linked to the broadcast center (see Dudkiewicz at paragraph 79 and Hackson at Fig. 1; pages 8-10).

As to claims 5 and 65, Dudkiewicz and Hackson disclose wherein the rating feedback comprises a single rated content piece (see Hackson at pages 8-10), and wherein transmitting the rating feedback comprises transmitting the rating feedback to the remote location in real-time (transmitting the questionnaire as it is completed; see Hackson at pages 8-10).

As to claims 6 and 66, Dudkiewicz and Hackson disclose wherein the second communications link comprises a continuous connection to the remote location (cable, optical; see Hackson at pages 3-4), the remote location being linked to the broadcast source (see Hackson at Fig. 1).

As to claims 7 and 67, Dudkiewicz and Hackson disclose wherein the second communications link comprises a connection to the remote location that is initiated to transmit the rating feedback (Internet, telephone lines; see Hackson at pages 3-4), the remote location being linked to the broadcast source (see Dudkiewicz at paragraph 79 and Hackson at Fig. 1; pages 8-10).

As to claim 9, Dudkiewicz and Hackson disclose wherein the content descriptors comprise a continuous stream of data that may be tapped at any time to rate at least a portion of the plurality of content pieces via the rating algorithm (see Dudkiewicz at paragraph 79).

As to claim 10, Dudkiewicz and Hackson disclose
receiving broadcast communications including the plurality of content pieces (see Dudkiewicz at paragraph 82); and
performing a capture algorithm to selectively determine, which, if any, of the content pieces should be cached (see Dudkiewicz at paragraph 79 and 82-84), and
wherein the rating algorithm is identical to the capture algorithm (see Dudkiewicz at paragraph 79 and 82-84).

As to claims 11 and 68, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of any existing cached data files to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claims 12 and 69, Dudkiewicz and Hackson disclose wherein the content descriptors include data pertaining to a revenue-generating potential of at least a portion of the content pieces (discount incentive for a particular broadcast; see Hackson at pages 3-4), and the rating algorithm includes a consideration of the content piece's

revenue generating potential when generating the rating feedback (including a discount for content; see Hackson at pages 3-4).

As to claims 13 and 70, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's previous viewing habits to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79-81).

As to claims 14, 20, 71 and 77, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a content piece's size (or duration) to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 15 and 72, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's preferences to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claims 16 and 73, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of an availability window corresponding to a content piece to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 17 and 74, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a future broadcast schedule to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 19 and 76, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a review of a content piece provided by an external source to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 21 and 78, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's age to generate the rating feedback (see Hackson at Figs. 4 and 6).

As to claims 22 and 79, Dudkiewicz and Hackson disclose generating a display on a display device that provides a user-interface that enables a user to rate content pieces so as to indicate a level of desirability for those content pieces if they are broadcast by the broadcast system (see Hackson at pages 3-4; Figs. 4 and 6).

As to claims 23 and 80, Dudkiewicz and Hackson disclose wherein the user rates at least a portion of the content pieces (see Hackson at pages 8-10).

As to claims 24 and 81, Dudkiewicz and Hackson disclose wherein the rating algorithm automatically rates at least a portion of the content pieces (see Dudkiewicz at paragraph 79).

As to claims 25 and 82, Dudkiewicz and Hackson disclose wherein the rating algorithm automatically rates at least a portion of the content pieces that were not rated by the user (see Dudkiewicz at paragraph 79).

As to claim 26, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's previous viewing habits to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79-81).

As to claims 27 and 33, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a content piece's size (or duration) to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 28, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's preferences to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claim 29, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of an availability window corresponding to a content piece to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 30, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a future broadcast schedule to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 32, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a review of a content piece provided by an external source to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 34, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of a user's age to generate the rating feedback (see Hackson at Figs. 4 and 6).

As to claim 35, Dudkiewicz and Hackson disclose wherein the rating algorithm includes a consideration of any existing cached data files to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claims 18, 31 and 75, while Dudkiewicz and Hackson disclose wherein content descriptors include data pertaining to the content piece (see Dudkiewicz at paragraph 74, Fig. 7) and the rating algorithm takes into consideration the data pertaining to the content piece to generate the rating feedback (see Dudkiewicz at paragraph 74, Fig. 7 and Hackson at pages 10-12), they fail to specifically disclose the content piece's past revenue performance.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to provide past revenue performance information, which could include video sales, box office receipts or the user's own pay-per view ordering or rental history, for the typical benefit of providing the user with as much information as possible to accurately determine their current interest and preferences towards the content.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz and Hackson's system to include the content piece's past revenue performance for the typical benefit of providing the user with as much information as possible to accurately determine their current interest and preferences towards the content.

As to claim 8, while Dudkiewicz and Hackson disclose wherein the broadcast communications include content descriptors which are received at pre-determined time intervals (at the end of a broadcast or in a batch at some prior time period; see Dudkiewicz at paragraph 75 and 79 and Hackson at pages 8-10), they fail to specifically disclose receiving a schedule pertaining to when the content descriptors will be broadcast prior to the content descriptors and utilizing the schedule to enable receipt of the content descriptors.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to provide a schedule indicating when/how data is to

be received for the typical benefit of providing a means to ensure that a receiver will correctly receive data transmissions.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz and Hackson's system to include receiving a schedule pertaining to when the content descriptors will be broadcast prior to the content descriptors and utilizing the schedule to enable receipt of the content descriptors for the typical benefit of providing a means to ensure that a receiver will correctly receive data transmissions.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in

Art Unit: 2623

such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on _____
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. () _____ - _____ on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Annan Q Shang/
Primary Examiner, Art Unit 2623

James Sheleheda
Examiner, Art Unit 2623

JS